

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 79 w/CS Communication Services

SPONSOR(S): Mack

TIED BILLS: **IDEN./SIM. BILLS:** SB 1078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Telecommunications (Sub)	6 Y, 0 N	Holt	Liepshutz
2) Business Regulations	31 Y, 0 N w/CS	Holt	Liepshutz
3) Judiciary			
4) Public Safety Appropriations (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

The bill updates s. 812.15, F.S. in order to provide penalties, not only for the theft of cable communications services, but also for theft of the many new types of communication services, except telephonic, being provided through advances in technology. The bill increases the penalty from a first degree misdemeanor to a third degree felony when private financial gain is the motivation for unauthorized interception or receipt of communications services or when assisting others to intercept or receive services unlawfully. The bill specifies that the possession of each unlawful device shall constitute a separate offense and requires the imposition by the court of a fine for each device and each day of violation.

As part of the criminal case, the bill requires the court to impose restitution upon a convicted defendant and authorizes the court, in its discretion, to order forfeiture of illegal communication devices.

Additionally, the bill amends the provisions of current law related to civil actions for the recovery of actual or statutory damages for economic injury to aggrieved parties. The bill creates authority for the court to order impoundment, destruction, or remedial modification of illegal devices. Furthermore, the bill raises the minimum statutory damages recoverable for violations committed for commercial advantage and also makes violations committed for private financial gain subject to the same higher statutory damages.

Lastly, the bill provides exemptions from its provisions to any state or local governmental entity, law enforcement agency, or any provider of communications services when lawfully acting in accordance with any other state or federal law.

The bill takes effect October 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0079b.br.doc

DATE: March 20, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 812.15, F.S. which currently provides penalties for the theft of cable communications services when a person without authorization intercepts or receives *cable* signals or assists another to do so through the manufacture or distribution of equipment designed for that purpose. The bill updates the section by expanding with specificity the existing definitions in the section, and by creating new ones, in order to cover, not only *cable* communications services, but the many new technologies that communication service providers, except telephone, are now offering to the public. The bill also amends the definitions to describe the many new technological devices and types of equipment being used to receive and intercept communication services without authorization.

Furthermore, the definitions and the elements of the criminal offenses are modified to describe and incorporate the means by which people illegally obtain communication services and the various methods employed by manufacturers and distributors to market their products (devices). Finally, those offenses which punish the mere possession of a device or number of devices are amended so that culpable knowledge may be established by showing either that the person knew that the devices were designed to receive communication services illegally or by showing that the individual knew the devices were designed for "*assisting others in committing a violation.*"

The bill increases the current penalty from a first degree misdemeanor to a third degree felony whenever private financial gain is the motive for illegally receiving or intercepting communication services, or for assisting others to do so by manufacturing or distributing equipment intended for such purpose. Similarly, the penalty is raised, in like fashion, whenever private financial gain is the motive for placing advertisements promoting the sale of such devices. Presently, first degree misdemeanors are punishable by imprisonment not exceeding 1 year and third degree felonies by imprisonment not exceeding 5 years; fines imposed by a court for a first degree misdemeanor may not exceed \$1000 or for a third degree felony, \$5000.

In regard to the imposition of criminal penalties for the unlawful possession of a communications device, the bill specifies each device shall constitute a separate violation and a fine shall be imposed for each device and each day of violation.

As part of the criminal case, the bill creates new provisions that *require* the court to impose restitution upon a convicted defendant and that authorize the court, in its discretion, to order forfeiture of communication devices involved in violating the statute.

For the purpose of establishing venue in the criminal case, the bill specifies that venue lies where the devices were manufactured or assembled, used to assist others to violate the statute, or sold or delivered to a person.

The bill also amends the provisions of s.812.15 that authorize aggrieved persons to bring civil actions for damages and creates new provisions allowing the court as part of the civil action to order the impoundment, destruction, or remedial modification of communications devices involved in violating the statute. Further, the bill creates a new provision defining actual damages as including the retail value of the services the violator received or the retail value of the services that others who were supplied the devices were capable of receiving; proof that the devices were actually used by others to obtain communication services is specifically not required under the bill.

Currently, in lieu of actual damages, a claimant may receive an award of statutory damages. The bill amends the law to allow the claimant to elect statutory damages at any time before the court enters final judgment and raises the minimum amount recoverable from \$250 to \$1500. In addition, statutory damages of up to \$50,000, which are currently recoverable, in the court's discretion, for willful violations that are committed for the purpose of gaining commercial advantage, will now become recoverable under the bill when violations are committed for private financial gain. The bill allows the court, in its discretion to impose statutory damages assessed for each illegal device and for each day of violation.

Finally, the bill excludes from its provisions any provider of communications services, state or local law enforcement or governmental entity when lawfully acting in accordance with any other state or federal law.

The bill takes effect October 1, 2003.

C. SECTION DIRECTORY:

Section 1. The bill updates and expands s. 812.15, F.S., in order to provide penalties for theft of cable and new types of communications services. The bill amends the provisions of current law related to civil actions for the recovery of actual or statutory damages for economic injury to aggrieved parties. The bill creates authority for courts to order impoundment, destruction, or remedial modification of illegal devices.

Section 2. Exemptions.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the Florida Cable Telecommunications Association, it is estimated that the theft of services provided by Florida's franchised cable television operators alone approaches some \$340 million per year in lost revenue, which translates into a loss to the State in Communications Services Tax revenue of over \$31 million with a corresponding loss to local governments across the state as well.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2003, the Subcommittee on Telecommunications adopted three amendments. The changes remove the word "telephonic" from the definition of the word "communications services," and remove the word "telephone" from the definition of the word "communications service provider" for the purposes of s. 812.15, F.S. Also the word "deployment" is added to the circumstances under which an individual is considered assisting others in committing the unlawful acts described in the section. Finally, exemptions from the provisions of the bill are provided for any governmental entities or any provider of communications services when lawfully acting in accordance with any other state or federal law. Those three subcommittee amendments were adopted by the full Business Regulation Committee on March 18, 2003 and were incorporated into the bill which was then reported favorably with CS.